IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 54 OF 2001

Dilip Bhoja Padalkar ..... Appellant.
(Ori.accused)

versus

The State of Maharashtra ..... Respondents.

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Mrs. Usha D. Andewar - advocate appointed for appellant/accused.
Mrs. V.R.Bhonsale APP for the State.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 4TH APRIL, 2005.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 2/12/2000 passed by the 3rd Additional Sessions Judge, Satara in Sessions Case No. 99/99, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case as revealed from our reappreciation of evidence with the assistance of the learned counsel for both the sides, stated briefly is that the accused and the deceased were married and had uncertain and quarrelsome relationship between them. According to the prosecution on 22-3-1999 around noon on that day, the accused assaulted his wife with a knife and on her shouting ran away from the place. Relations who were staying nearby gathered. They heard the victim saying that she has been stabbed by her husband. She was thereafter taken to the hospital where she succumbed her injury. On the basis of the FIR lodged by the mother of the victim, crime under section 302 IPC was registered and accused was arrested, investigation was completed. The prosecution examined as many as 14 witnesses to prove that the victim, wife of the accused met homicidal death at the instance of the accused and the death amounted to murder. The learned trial Judge by appreciating the evidence on record has come to the conclusion as aforesaid and convicted the accused to suffer imprisonment for life as mentioned above. Feeling aggrieved by the order of conviction and sentence the present appeal is filed before this court.

4. Ms. Usha Andewar was appointed to represent the accused in this case and the Sate was represented by Mrs. V.R.Bhonsale APP. It was the contention of the learned counsel appearing on behalf of the appellant that there are major inconsistencies in the evidence on record and it is not acceptable and consequently the order of conviction is not sustainable. According to the learned counsel the recoveries of knife, shall etc, is suspicious and are not therefore form part of the conviction. The learned counsel, from the deposition of various witnesses pointed out that there are discrepancies in the evidence which is to be considered and so considered the evidence become unreliable. This submission is countered by the Ld. APP by pointing out that there are no discrepancies and whatsoever view are pointed out are consistent with the fact. The testimony in the court was given after lapse of several months and such inconsistencies or contradictions are natural in normal conduct of life. They are not such as to require disbelieving of the entire evidence. There are cogent reason given by the learned trial Judge who have come to the conclusion of guilty and the evidence as it stands on record is more than adequate to substantiate the findings recorded by the learned trial Judge. We have to appreciate this rival contentions in the light of the reappreciation of the

evidence that we have done with the assistance of the counsel.

5. P.w.1 Ramchandra is a panch to the recovery of the dead body. While proving the panchanama Exh.19 he has pointed out that he has deposed about it because he saw the stab injury on the left abdomen of the victim, who was a woman. We have scrutinised his cross examination also and there is nothing in it which would require or to disbelieve the entire testimony of this witness.

6. P.w.2 Suresh is the panch to the arrest of the accused. He is also witness to the seizure of the clothes of the accused which had blood staines. Apart from the fact that he has proved the panchanama in the court, he has also identified the bloody clothes of the accused as Article No. 8, 9 and 12 that was seen by him while executing panchanama Exh.21. From the evidence of this witness it is therefore obvious that the accused was arrested immediately after the occurrence and at the time when he was arrested, he was wearing the clothes which was blood stained and the clothes have been duly identified in the court by the witness P.w.2. The prosecution has thus proved firstly the homicidal death of the victim, wife of the accused. The homicidal having been proved by Dr. Shyam, P.w.10

who conducted the post mortem and also who proved the post mortem. He had very categorically stated in his evidence that the victim has died because of the stab injury. The prosecution has thus proved via P.w.1 and 10 that the victim met homicidal death. P.w. no.2 proved that the accused was arrested and at the time of arrest he was wearing clothes which had blood staines.

7. Then we have the evidence of P.w.3 Sukhadev who is a panch and who has witnessed the recovery of knife wrapped in a shawl of green colour at the instance of the accused from bushes near Nirgudi. He has proved the panchanama Exh.26 in which this fact is pointed out. He has also proved Exh.27 in which accused made statement regarding recovery of knife wrapped in shawl. Excluding inculpatory statement on the point, it has been very clearly stated by the accused that he would show the knife which he has wrapped in a green colour shawl and put behind the bushes of Nirgudi. Then factual recovery of the same as noticed by panchanama Exh.26 therefore substantiates the oral testimony of the witness P.w. no. 3 that the knife wrapped in shawl of green colour was recovered vide panchanama Exh.26 at the instance of the accused. It is pertinent to note that this recovery is voluntary done by the accused and the fact that the blood stained knife

wrapped in green shawl is kept behind the bushes of Nirgudi to the knowledge of the accused and it is this knowledge and the recovery of the knife at his instance which is a very substantial evidence to prove involvement of the accused for commission of the crime.

8. Then we have corroborative evidence of P.w.4 Sarajabai, who is the mother of the victim and who arrived near the victim immediately hearing the shouts, when the victim told her that the accused has stabbed her in the abdoman and has ran away. Factually also the witness has deposed that she saw the accused running away from the spot leaving his wife i.e. the victim with bleeding injuries in the abdoman. The evidence of P.w.4 that she was told immediately by the victim about the assault by the accused, is substantially corroborated by the testimony of P.w.5 Bhoja and P.w.6 Kashinath who are apart from the relations, residents of the nearby house. They also have deposed that they heard the shouts of the victim and immediately came out to find out what had happened, when they saw the victim lying bleeding with stab injuries in the abdoman. They heard the victim saying that she has been so attacked by her husband when complainant P.w.4 was also present there. We thus have intrinsic evidence of P.w.4, 5 and 6 saying that they

saw the accused running away from the place and tried to chase him and heard the victim saying that she has been stabbed in the abdoman by the accused. The fact that she has been so stabbed is also corroborated by the testimony of P.w.10 Dr. Shyam who conducted the post mortem and has deposed that the death has occurred because of the stab injury in the abdoman. There is thus intrinsic evidence corroborating the testimony of P.ws. 4, 5 and 6 when they say that they heard the victim saying that she has been stabbed by the accused and the same has been proved by the medical evidence of Dr. Shyam P.w.10 who states that the stab injury is the cause of death.

9. Then the prosecution has examined P.w.7 Sidram who speaks of previous quarrel between the husband and wife and P.w.8 has also stated that he also heard the victim saying that she was stabbed by her husband and went to call doctor who arrived there and directed her to be taken for medical treatment. P.w.9 is another witness, but he has turned hostile and has not corroborated the testimony of P.w.8. However, the testimony of P.w.8 finds substantial corroboration from the testimony of P.w.4 Sarajabai, P.w.5 Bhoja and P.w.6 Kashinath respectively. There is thus more than adequate evidence on record to show that the accused stabbed his

wife in the abdoman, that on raising shouts by the wife, P.w.5 came out and was joined by P.w.6 who also heard the victim saying that she has been stabbed by the accused and all of them saw the accused running away. This evidence is further corroborated by the evidence of recovery of knife and the shawl in which the knife was wrapped, at the instance of the accused. In the face of this evidence it cannot be said by any stretch of imagination, because there are certain minor discripencies in the testimony of P.ws. 4, 5 and 6 the entire evidence is liable to be discarded. In our opinion, there is no error of law and fact committed by the learned Judge in coming to the conclusion of guilt in recording the judgment and order of conviction as is done by him. We entirely concur with the findings recorded by the learned Judge. We have also given our independent reasons for accepting those findings as correct. In our opinion, therefore, the appeal must fail and it is liable to be rejected. It is accordingly dismissed. The accused was represented before us by an advocate appointed and the advocate has taken adequate efforts to put their entire case before us. We therefore quantify the fees payable to the advocate for the appellant appointed at Rs. 1000/-.

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